

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

City of Vernon, California

Docket No. EL01-75-000

ORDER DISMISSING COMPLAINT

(Issued December 28, 2004)

1. This order dismisses, without prejudice, a complaint filed by the City of Vernon, California (Vernon) against the California Independent System Operator Corporation (CAISO or the ISO). In its complaint, Vernon argues that it should be exempt from transmission curtailments on the CAISO system when it is fully scheduled and fully resourced. The Commission dismisses the complaint because the basis of the complaint no longer exists.

Background

2. Vernon is a municipally-owned system with Participating Transmission Owner (PTO) status. It owns distribution, transmission, and generating facilities, and has contract rights to transmission and generation service. Vernon serves primarily industrial customers. As a PTO, Vernon's operational control of its high voltage transmission facilities and contract rights have been turned over to the CAISO. Pursuant to the ISO FERC Electric Tariff and Vernon's agreements with the ISO, Vernon is also a Utility Distribution Company (UDC). In addition, Vernon serves as a Scheduling Coordinator.

3. CAISO, pursuant to the terms of its tariff, has the responsibility of ensuring reliability, and therefore has the role of balancing load and supply on its system. Among other things, CAISO provides a real-time energy market to balance load and supply. As Vernon explains, this service is necessary because utilities are unable to schedule in advance to precisely meet real-time load. Vernon further explains that "[r]eliable system operations require that responsibility be assigned to some entity for ensuring that the system is in balance as to load and supply on an hour-to-hour, minute-to-minute basis."¹

¹ Complaint at 3.

The Complaint

4. On May 7, 2001, Vernon filed a complaint against the CAISO. Vernon requests that the Commission order that the ISO may not require Vernon to interrupt firm service to its customers as a result of curtailment on the ISO system. Vernon states that it was widely reported that California was expected to suffer shortages of power supply during the summer of 2001, with projections of resulting blackouts of 30 days or more. Vernon contends that on prior occasions when there was a shortfall of energy in real-time, the CAISO imposed rotating (or rolling) blackouts that required all utilities, including Vernon, to blackout a portion of their load on a pro rata basis with other utilities on the ISO system in general, or on the specific section of the system that was affected. Vernon argues that such measures were taken regardless of whether or not a particular utility was fully resourced to meet its obligated load or fully scheduled. Many of the load shedding instances occurred, Vernon alleges, as the result of the failure of other utilities to balance their loads with sufficient supplies, and not the result of a sudden unforeseen failure of facilities.

5. Vernon argues that utilities, like itself, that are fully scheduled in advance and that can certify that their schedules meet their actual loads should not be required to disrupt service to their customers to accommodate other utilities that fail to adequately schedule. Vernon contends that it took the appropriate steps, consistent with CAISO's reliability requirements, to ensure reliable service to its customers.

6. Vernon alleges that on March 19 and 20, 2001, it was forced by the CAISO to curtail its system load on a pro rata basis with Southern California Edison (Edison) when the CAISO instituted rotating blackouts. Vernon contends that it had sufficient resources to cover its loads on those days and sold surplus energy to California Department of Water Resources. In response to its query to the CAISO as to why this was done, Vernon alleges that the CAISO responded that that occasion constituted a "system emergency," pursuant to the terms of the tariff.

7. Vernon, however, contends that under a good utility practice standard the failure of other utilities to adequately schedule load is not a "system emergency." Vernon elaborates that a good utility practice supports true system emergencies such as a sudden outage of a generation unit or of a high voltage transmission system – that is, a sudden unexpected failure of facilities. However, the current situations to which the CAISO is referring, Vernon contends, are not "system emergencies" within that meaning, but are the result of poor choices of some utilities that fail to abide by the ISO tariff requirements.

8. Vernon contends that such wide-spread across-the-board rolling blackouts are not just and reasonable, are unduly discriminatory, and send counterproductive signals to the market. Vernon argues that the Commission, in order to ensure the continued formation

of RTOs, should ensure that the establishment and application of rules for imposing rolling blackouts are just, reasonable and non-discriminatory. In particular, Vernon requests that in instances when a utility, like itself, is a PTO and a UDC, and has adequately scheduled in advance for its actual real-time load, it should not be required to participate in rotating blackouts. Recognizing that blackouts would apply in cases of “true system emergencies,” Vernon concludes that rotating blackouts, in the situation at issue, should apply to only those utilities that have chosen not to procure or schedule in advance sufficient resources to serve their loads.

Notice of Filing, Interventions, Protests and Answers

9. Notice of Vernon’s complaint was published in the *Federal Register*, 99 Fed. Reg. 24,359 (2001), with comments, interventions and protests due on or before May 18, 2001. The following parties filed motions to intervene with no comments: Duke Energy North America, LLC and Duke Energy Trading and Marketing, LLC; California Electricity Oversight Board; Modesto Irrigation District; and Southern California Water Company. The Public Utilities Commission of the State of California filed a notice of intervention.

10. The following parties filed motions to intervene with comments in support of the complaint: California Municipal Utilities Association (CMUA); Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (collectively, Southern Cities); Cities of Redding, Santa Clara, and Palo Alto, California, and the M-S-R Public Power Agency (collectively M-S-R/Cities); City of Pasadena, California (Pasadena); Northern California Power Agency (NCPA); and Sacramento Municipal Utility District (SMUD).

11. Pacific Gas and Electric Company (PG&E) and Edison filed motions to intervene and protests.

12. On May 18, 2001, the CAISO filed its answer to Vernon’s complaint. On May 25, 2001, Vernon filed an answer to CAISO’s answer. On June 4, 2001, PG&E filed an answer with comments opposing comments in support of the complaint. Also on June 4, 2001, Edison filed an answer in response to intervenors seeking to expand the scope of the remedy sought by Vernon in its complaint. On June 19, 2001, Pasadena submitted a response to PG&E’s and Edison’s answers. On August 2, 2001, Vernon requested expedited Commission action on its complaint. On November 19, 2001, Vernon filed a renewed request for Commission action in light of the Commission’s August 30 Order in Docket No. ER01-889-000 on creditworthiness issues.² Vernon argues that the August 30 Order highlights the damage to ISOs and its customers when certain ISO customers

² *Order Granting Motion Concerning Creditworthiness Requirement and Rejecting Amendment No. 40*, 97 FERC ¶ 61,151 (2001) (November 7 Order).

are not creditworthy to continue to receive energy as a result of poor enforcement of ISO tariff requirements. Vernon analogizes that just as generators that comply with must run requirements are unfairly harmed when certain ISO customers are not creditworthy and the ISO fails to enforce its tariff, so too are Scheduling Coordinators, like Vernon, unfairly harmed when they are forcibly subjected to blackouts because others are underscheduled. On December 3, 2001, Edison filed a response to Vernon's renewed request for Commission action.

CAISO's Answer

13. The CAISO states that the complaint is Vernon's attempt to dictate the path of rolling blackouts in the ISO Control Area and is an attempt to derogate Vernon's obligations that it freely undertook in executing a UDC Agreement.³ The CAISO contends that Vernon is again trying to "mix the unrelated issues of individual utilities' schedules and system-wide emergencies necessitating rolling blackouts."⁴

14. In response to Vernon's contention that utilities that fully scheduled should not be subject to rolling blackouts, the CAISO states that there is no linkage between an individual UDC's balanced schedule and the allocation of responsibility to participate in load curtailments in order to manage a system emergency in the ISO Control Area.⁵ The CAISO explains that during system emergencies, pursuant to established procedures, all UDCs and all load have the appropriate and equitable responsibility to participate in unavoidable rolling blackouts.⁶ This approach, the ISO explains, is consistent with the principle of interconnected utility operations, and the joint obligations and responsibilities of Control Area participants. The CAISO further explains that when there is a need for UDCs to curtail loads, the ISO does not know which utilities have scheduled correctly and which have not, nor does the ISO know which load is being served by which generation.⁷ As such, the ISO contends, load shedding procedures are not and should not be based on the accuracy or inaccuracy of a UDC's schedule or whether or not a UDC is adequately scheduled.⁸

³ CAISO Response at 1-2

⁴ *Id.* at note 2 which states that Vernon essentially made the same arguments in its protest of Amendment No. 38 of the ISO Tariff in Docket No. ER01-1579.

⁵ *Id.* at 4.

⁶ *Id.* at 5.

⁷ *Id.*

⁸ *Id.* at 5.

15. The CAISO concedes that there is a chronic shortage of supply in the ISO Control Area and that a significantly large shortage of supply does, in fact, constitute a system emergency.⁹ It states, however, that the ISO cannot predict with any precision when the necessity will arise to require load curtailment. As such, the CAISO contends, Vernon's characterization of the rolling blackouts resulting from a "predictable, chronic shortage of supply by certain utilities" and therefore not constituting system emergencies is incorrect. The CAISO explains that the ISO tariff and its operating procedures require that when the control area is short of resources, all UDCs are required to take a pro rata reduction of load. The CAISO contends that just as the trigger of a rolling blackout may not be UDC-specific, its reaction to the shortage cannot be UDC-specific.¹⁰

16. The CAISO further contends that contrary to Vernon's assertions, it does not impose blackouts to "punish" the customers of unruly UDCs or to incent certain behavior.¹¹ In addition, the CAISO states that rolling blackouts, when implemented, are unavoidable, and not the result of "bad utility practice." The CAISO explains that it does everything within its power to prevent blackouts in any part of its Control Area, but that when required, they are imposed evenhandedly.

Comments on the Complaint

Comments in Support of Complaint

17. The parties filing comments in support of Vernon's complaint generally reiterate Vernon's comments and further request that, in addition to granting Vernon's request, the Commission should extend the same relief to other similarly-situated CAISO participants.¹² The parties state that Vernon's complaint is consistent with fairness and Commission policy and that the CAISO's current practice of imposing rolling blackouts is inconsistent with the simple principle that customers that buy and pay for energy should receive the benefit of the energy for which they paid.¹³ Southern Cities contends that the CAISO cannot justify this practice on the grounds that insufficient energy to meet the needs of the entire Control Area load constitutes a system emergency when such

⁹ *Id.* at 7.

¹⁰ *Id.* at 8.

¹¹ *Id.* at 9

¹² *See, e.g.,* Pasadena at 3, 8-10; M-S-R/Cities at 9-10; Southern Cities at 1, 12-13; SMUD at 1.

¹³ Southern Cities at 7.

failures are the result of the failure of some utilities to arrange for adequate resources to meet their anticipated loads. Pasadena argues that the Commission's policy should be to encourage all utilities to make arrangements to have adequate supply to serve their own native loads, through some combination of self-generation and purchase power agreements.¹⁴ In addition, Pasadena requests that the Commission require the CAISO to limit pro rata curtailment to only circumstances of unexpected and unavoidable failure of system facilities.¹⁵

Comments in Opposition to Complaint

18. In its protest, PG&E argues that exempting Vernon from rolling blackouts, regardless of the cause for the shortfall of energy, would cause a disproportionate threat to public health, safety and welfare on the retail customers of all other UDCs that rely on the CAISO for transmission service and system reliability.¹⁶ In addition, PG&E argues, Vernon's request, if granted, would afford Vernon favored treatment under the ISO tariff in the event of system emergencies, without any offsetting increased burden.¹⁷ PG&E asserts that the Commission should reject Vernon's arguments because such a policy would also conflict with the Federal Power Act's obligation that the Commission assure that rate schedules are not unduly discriminatory and preferential.

19. PG&E urges the Commission to allow the CAISO to use the tools it is permitted to use, pursuant to the terms of the ISO tariff, in order to manage system emergencies, consistent with good utility practice.¹⁸ PG&E further argues that it is common practice among control area operators to curtail load proportionately unless there is some compelling reason to do otherwise. PG&E contends that Vernon has not presented any evidence or reason to support its claims of contrary intent.¹⁹ PG&E concludes that Vernon's attempt to distinguish between system emergencies under the ISO tariff resulting from unplanned outages and chronic supply does not justify disparate treatment of various UDCs' end-use customers.

¹⁴ Pasadena at 7.

¹⁵ *Id.*

¹⁶ PG&E Protest at 1.

¹⁷ *Id.* at 2 and 4.

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 5.

20. Edison argues that Vernon should not be allowed to unilaterally abrogate its obligations to Edison and the CAISO. Edison contends that in two separate contracts on file with the Commission, Vernon agreed to the load curtailment procedures that it now seeks to abrogate.²⁰ Edison contends that Vernon agreed, among other things, to be obligated to curtail its load when directed by Edison or the CAISO.²¹ Edison states that Vernon cannot selectively and unilaterally choose which provisions of a contract it will abide by; the terms of its contractual obligations must be enforced in their entirety.²² Edison further cites to the UDC Agreement between Vernon and the CAISO in which Vernon agrees to comply with the load curtailment obligations of the ISO tariff, the ISO Operating Procedures, the ISO Specifications, and Schedule 8 of the UDC Agreement.²³

21. In addition, Edison argues, Vernon cannot cite to any provisions of the ISO tariff that the CAISO has violated regarding Vernon's load curtailment, and its complaint is merely based on vague allegations. Edison further argues that, as Vernon acknowledges, its complaint is in direct violation of the terms of the alternative dispute resolution provisions in the ISO tariff and should therefore be dismissed.²⁴

Commission Inquiry on Status of Complaint

22. In a letter to Vernon on May 27, 2004, the Commission inquired whether Vernon's complaint was moot since it became a PTO under the CAISO. On June 14, 2004, Vernon responded "no" to the Commission's inquiry. Vernon contends that it does not believe that its PTO status affects its original complaint. Vernon explains that it is still dependent on the CAISO to deliver energy for redelivery to its retail customers regardless of its PTO status. As such, should the CAISO implement curtailment measures because it does not have sufficient energy to meet the needs of its customers, Vernon contends that it would still be subject to curtailment, even if it is adequately scheduled.

²⁰ Edison Protest at 3-4.

²¹ See sections 11.2 and 11.2.1 of the 1997 Laguna Bell-Vernon Interconnection Service Agreement between Vernon and Edison.

²² Edison Protest at 4.

²³ *Id.* at 5, citing section 4.2.3 of the UDC Agreement and section 1.3.4 of the ISO Operating Procedure No. E-508.

²⁴ *Id.* at 3 and 8-9.

23. Vernon also states that the CAISO has entered into Metered Sub-System agreements with certain customers and certain tariff amendments which the Commission accepted as Amendment No. 46 to its tariff.²⁵ Vernon states that, among other things, the tariff was amended to provide that:

[If] the ISO must curtail Load, and an entity is short of resources to serve its Load because it did not procure sufficient resources, then only that entity(ies) will be required to shed Load.

Vernon states that, by their terms, these provisions apply equally to both Metered Sub-Systems and UDCs and since it is a UDC, these provisions would therefore apply to it. However, Vernon contends that, to its knowledge, the CAISO has not fully implemented these provisions with respect to UDCs, nor is it aware of whether the CAISO has implemented any such procedures. Without such knowledge, Vernon contends, its complaint is therefore unresolved and should be addressed.

Discussion

Procedural Matters

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the notice of intervention and timely, unopposed motion to intervene serve to make the entities that filed them parties to this proceeding.

25. Rule 213(a) (2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a) (2) (2003), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Vernon's, PG&E's, Edison's, and Pasadena's answers and will, therefore, reject them.

Commission Determination

26. We will dismiss Vernon's complaint without prejudice. Since Vernon filed its complaint, the CAISO has modified its tariff thereby rendering Vernon's complaint moot. In its August 30 Order regarding the CAISO's proposed Amendment No. 46, the Commission accepted certain proposed modifications to the CAISO tariff that allowed the ISO to identify and curtail load of UDCs and Metered Sub-Systems that had scheduled insufficient resources to meet demand rather than impose a pro rata allocation

²⁵ *California Independent System Operator Corporation*, 100 FERC ¶ 61,234 (2002) (August 30 Order), *order on reh'g*, 102 FERC ¶ 61,146 (2003) (February 6 Order).

to all UDCs and Metered Sub-Systems.²⁶ Under the terms of the tariff, the CAISO annually creates a prioritization schedule for shedding and restoring load on the system.²⁷ Specifically, section 4.5.3.2 of the CAISO tariff states that if the CAISO forecasts in advance of the Hour-Ahead Market that load curtailment is necessary due to a resource deficiency, the CAISO will identify any UDC or Metered Sub-System Service Area that is resource deficient. The tariff further states that the CAISO will provide notice to all Scheduling Coordinators if one or more UDC or Metered Sub-System is deficient. Furthermore, that tariff states that if load curtailment is required to manage a system emergency associated with insufficient Hour-Ahead Schedule of resources, the ISO will determine the amount and location of load to be curtailed, and will allocate a portion of that required load curtailment to each UDC or Metered Sub-System Operator whose Service Area has been identified, based on Hour-Ahead Schedules, as being resource-deficient based on the ratio of its resource deficiency to the total Control Area resource deficiency.

27. Accordingly, we find that Vernon's original request for relief has been satisfied by the Commission's acceptance of the CAISO's proposed tariff modifications discussed above. Load curtailment because of resource deficiency has been modified so that it is no longer based on a system-wide pro rata share of curtailment, which was the case when Vernon filed the instant complaint. Vernon's contention that it is not aware of whether the CAISO has fully implemented these revised tariff procedures is unavailing. The fact is that the CAISO's tariff now provides that load curtailment is based on resource deficiency and the CAISO is required to follow its tariff. Thus, the CAISO's tariff assures that UDCs, such as Vernon, that are adequately scheduled in advance and that can certify that their schedules meet their actual loads will not be subjected to any disruption of service to accommodate other UDCs or Metered Sub-Systems when there is a shortfall due to resource deficiency.

The Commission orders:

Vernon's complaint is hereby dismissed without prejudice, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

²⁶ *Id.*

²⁷ CAISO Tariff at section 2.3.2.6.